

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD C. WOJEWODZKI,	:	CIVIL ACTION NO. 1:CV 01-285
Plaintiff	:	
v.	:	JUDGE SYLVIA H. RAMBO-HARRISBURG, PA
CONSOLIDATED FREIGHTWAYS, INC.,	:	<i>Sylvia H. Rambo</i>
Defendant	:	MARY E. D'ANDREA, CLERK Per <i>[initials]</i> Deputy Clerk

**CONSOLIDATED FREIGHTWAYS CORPORATION'S AMENDED MOTION  
TO DISMISS OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

Consolidated Freightways Corporation of Delaware (hereinafter "CF"), by its attorneys, hereby moves, pursuant to Rules 12(b)(6) and 56(b) of the Federal Rules of Civil Procedure, to dismiss Plaintiff's Complaint or, alternatively, for an order entering judgment in its favor. In support of this motion, CF states as follows:

1. On February 14, 2001, Plaintiff commenced this action by filing his Complaint.
2. Plaintiff asserts his claim against CF under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq ("ADEA") (Count I).
3. Plaintiff, age 56, bases his claim on the assertions that he was demoted because of his age and that he was replaced by a substantially younger person. Compl., at ¶ 13.
4. Plaintiff's replacement was James M. Kot, age 51. See Declaration of Jeff Rice, attached as Exhibit 1.
5. CF hereby moves to dismiss Plaintiff's Complaint in its entirety, pursuant to Fed. R. Civ. Pro. 12(b)(6), for failure to state a claim upon which relief may

be granted. Plaintiff cannot establish a *prima facie* case, as Mr. Kot, Plaintiff's replacement, is not substantially younger than Plaintiff, as defined by the Third Circuit Court of Appeals. See Narin v. Lower Merion School District, 206 F.3d 323 (3d Cir. 2000).

6. CF sets forth its arguments in support of this motion in their supporting Memorandum of Law which will be filed within the time prescribed by Local Rule 7.5 of the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,



VINCENT CANDIELLO  
G. SCOTT PATERNO  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
717.237.4000

Of Counsel:

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: May 2, 2001

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD C. WOJEWODZKI,

CIVIL ACTION NO. 1:CV 01-285

Plaintiff

v.

JUDGE SYLVIA H. RAMBO

CONSOLIDATED FREIGHTWAYS,  
INC.,

Defendant

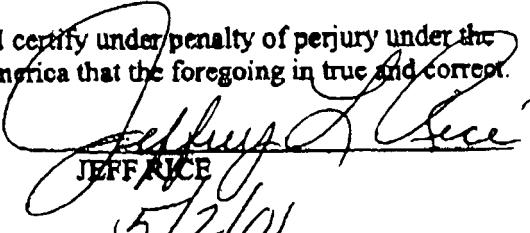
JURY TRIAL DEMANDED

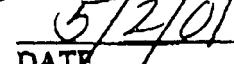
**DECLARATION OF JEFF RICE**

I, Jeff Rice, state that I am an adult who is competent to testify to the matters herein and that the matters herein are within my personal knowledge:

1. In July of 1999, James Kot was promoted to Regional Dispatch Manager.
2. Mr. Kot replaced Richard C. Wojewodzki, A/K/A Dick Ski.
3. Mr. Kot's birthday is 6/17/49.
4. Attached hereto as Exhibit A is a true and accurate copy of the "Employee Change Notification" that expressly designates Mr. Kot as Mr. Wojewodzki's replacement.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
JEFF RICE

  
5/2/01

DATE

09/14/2000 15:03 7172400518

## EMPLOYEE CHANGE NOTIFICATION

**EXHIBIT Q**TODAY'S DATE  
07/14/1999

COMPANY NAME

SSN #  
078-42-2981

Consolidated Ptwys Co of DE

EMPLOYEE #  
00187EFFECTIVE DATE  
6/13/99

COMPUTER PRINT SECTION				HAND PRINT SECTION			
NAME/LASTI Kot		MI X	LEGAL FIRST NAME James	NAME/LASTI Kot		MI M	LEGAL FIRST NAME JAMES
ADDRESS LINE 1 7 Westwood Ct				ADDRESS LINE 2 7 Westwood Ct			
CITY York	STATE PA	ZIP CODE 17402	CITY York	STATE PA	ZIP CODE 17402		
HOME PHONE 078422881	SEX M	MARITAL STATUS Married	FIRST DAY WORKED 01/25/1999	HOME PHONE 3	SEX M	MARITAL STATUS M	FIRST DAY WORKED 1/25/99
ACTION/REASON CODE MUST BE SHOWN HERE				ACTION/REASON CODE Promo			
REFER TO MIDS SCREEN '180C' FOR INSTRUCTIONS ON ACTION REASONS							
UNIT 30	DEPT/LOC CLP/CLP	JOB CODE 2172	JOB TITLE LineSpv I	UNIT	DEPT/LOC	JOB CODE	JOB TITLE
PHYSICAL LOCATION OF EMPLOYMENT - If other than dept/loc				PHYSICAL LOCATION OF EMPLOYMENT - If other than dept/loc			
EMP STATUS Regular / Full-time				EMP STATUS <input type="checkbox"/> RETURNING TO WORK <input type="checkbox"/> TO REG. FULL TIME <input type="checkbox"/> TO REG. PART TIME <input type="checkbox"/> TO SUPPLEMENTAL <input type="checkbox"/> TO LIGHT DUTY			
HOURLY RATE/WEEKLY SALARY 1,030.00	MILEAGE RATE		NEW HOURLY RATE/WEEKLY SALARY 1355.66	NEW MILEAGE RATE			
UNION/LOCAL #	UNION SICK DATE		UNION LOCAL #	UNION SEN. DATE			
COMPANY AUTO #	D/L EXP. DATE		COMPANY AUTO #	D/L EXP. DATE			
ANNIVERSARY DATE 01/25/1999	LAST DAY WORKED		ANNIVERSARY DATE	LAST DAY WORKED			
EXPECTED RETURN DATE	PHYSICAL EXAM EXP. DATE		EXPECTED RETURN DATE	PHYSICAL EXAM EXP. DATE			
LOCAL TAX Workers Comp Carlisle Borough Carlisle Borough	DEDUCT CITY TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO NAME OF CITY		DEDUCT COUNTY TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO NAME OF COUNTY	DEDUCT SCHOOL TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO SCHOOL DIST NAME/NO.			

FINAL VACATION PAY:

SALARIED

HOURLY - SUBMIT FORM 00688-30

SHOW AMT USED SINCE JAN. 1

SALARIED

BANKED DAYS DUE

REMARKS

*Has been promoted to Regional Dispatch Manager and will be replacing Dick Skinner*

APPROVALS

*Jeffrey L. Lee 9/13/99*  
SIGNATURE DATE

SIGNATURE DATE

2

SIGNATURE

DATE

SIGNATURE

DATE

IF FEDERAL AND/OR STATE TAX WITHHOLDING STATUS IS DESIRED, COMPLETE W4 WITHHOLDING STATEMENT AND FORWARD TO PAYROLL

PLACE PHOTOCOPY OF COMPLETED FORM IN EMPLOYEE'S PERSONNEL FILE

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Plaintiff	:	
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	:	
CONSOLIDATED FREIGHTWAYS, INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**CERTIFICATE OF NONCONCURRENCE**

I, Vincent Candiello, hereby certify that on April 27, 2001, Plaintiff's counsel advised me that Plaintiff would not concur in Consolidated Freightways Corporation of Delaware's Motion to Dismiss or, Alternatively, Motion for Summary Judgment.

  
VINCENT CANDIELLO

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Consolidated Freightways Corporation's Amended Motion to Dismiss Plaintiff's Complaint or Alternatively, Motion for Summary Judgment has been served via U.S. Mail, postage prepaid, on this **2nd day of May, 2001**, upon the following:

Lawrence L. Markowitz, Esquire  
Markowitz & Krevsky, P.C.  
208 E. Market Street  
P.O. Box 392  
York, PA 17405-0392



G. SCOTT PATERNO